

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: BROOKLYN ELEVATOR, INC. Poweshiek County, Iowa Iowa County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2011-AQ-12 NO. 2011-SW-14
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TO: Michael Thys, Registered Agent
Brooklyn Elevator, Inc
143 West Front Street, Box 371
Brooklyn, Iowa 52211

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brooklyn Elevator, Inc. (Brooklyn Elevator) for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition, burning and disposal of an elevator building in Victor, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Josh Sobaski, Field Office #6
Iowa Department of Natural Resources
1023 West Madison
Washington, IA 52353
Phone : (319) 653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone : 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Michael Thys operates Brooklyn Elevator. Brooklyn Elevator stores and warehouses grain at two locations: 143 West Front Street in Brooklyn, Iowa and 101 County Line Road in Victor, Iowa.

2. On November 29, 2010, DNR Field Office 6 received an anonymous complaint regarding a building in Victor, Iowa being demolished. The complainant stated that the building was being taken away and burned at another location. The complainant stated that Michael Thys was the property owner and the person conducting the burning. The complainant stated that the burning had been going on for three days.

3. On December 6, 2010, Josh Sobaski, DNR Field Office 6 environmental specialist investigated the complaint. Mr. Sobaski spoke with Mr. Thys at the Brooklyn Elevator facility located in Brooklyn. Mr. Thys informed Mr. Sobaski that an iron clad wooded elevator located at the intersection of 1st Street and County Line Road in Victor was demolished and taken to another property located outside the city limits of Victor and burned. Following the inspection, DNR Field Office 6 confirmed that a demolition notification had not been submitted prior to the demolition.

4. On December 7, 2010 Mr. Thys submitted a written statement to DNR Field Office 6. Mr. Thys stated that the location cited in the complaint was his farm property located in Iowa County. He stated that several acres of timber had been cleared and burned. He stated that the burning was approved by the Iowa County FSA office. Mr. Thys also stated that the building in Victor had been demolished in March 2010 and taken across the road outside of the city limits and burned. Mr. Thys stated that the remaining steel was recycled and the remaining ashes and nails were disposed of. Mr. Thys stated that two new steel grain bins, a grain dump, and an elevator leg have now been constructed at the burn site.

5. On December 17, 2010, DNR issued a Notice of Violation letter to Brooklyn Elevator for the air quality violations discovered during Mr. Sobaski's investigation. The violations included failure to notify of the demolition and improper open burning. The letter stated that the matter was being referred for possible enforcement.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.
2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). A building owned by Brooklyn Elevator was demolished, transported to a different location, and burned. The above facts demonstrate noncompliance with this provision.
3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.
4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the building. The above facts indicate a violation of this provision.
5. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the building. The above facts indicate a violation of this provision.
6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.
7. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The demolition debris from the building was placed in a hole and burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

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V. ORDER

THEREFORE, it is hereby ordered and Brooklyn Elevator agrees to do the following:

1. Brooklyn Elevator shall pay a penalty of \$4,000.00 in accordance with the following payment plan:
\$2,000.00 due May 1, 2011; and
\$2,000.00 due May 1, 2012.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$4,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the buildings has allowed Brooklyn Elevator to save time and money. Brooklyn Elevator was able to avoid the cost of an asbestos inspection and saved time by not notifying the DNR of the demolition. The estimated cost of an inspection and possible cost of asbestos abatement that Brooklyn Elevator avoided is \$1,000.00. Additionally, Brooklyn Elevator was able to avoid landfill costs by burning the building rather than taking it to the landfill. It is estimated that Brooklyn Elevator saved at least \$1,000.00 in landfill fees and transportation costs. Therefore, \$2,000.00 is assessed for economic benefit.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open

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burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The open burning and improper solid waste disposal impacted the health of the Brooklyn Elevator employees, the demolition workers, and the local residents of Victor. \$1,500.00 is assessed for gravity of violation.

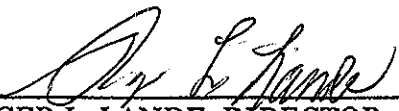
Culpability – Brooklyn Elevator has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Brooklyn Elevator. For that reason Brooklyn Elevator waives the rights to appeal this administrative order or any part thereof.


VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 28th day of
April, 2011.



Brooklyn Elevator, Inc

Dated this 19th day of
April, 2011.

Barb Stock (Con 10-6 Iowa County); Kelli Book; Field Office 6; EPA; VI.C, VII C.1, and VII.C.4